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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2012 - 117**  
**A C C U S A T I O N**

13 **MELISSA ANN GIBBENS**  
825 West Stevens Ave., Apt. 6  
14 Santa Ana, CA 92707

15 **Registered Nurse License No. 770921**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about March 22, 2010, the Board of Registered Nursing issued Registered  
24 Nurse License Number 770921 to Melissa Ann Gibbens (Respondent). The Registered Nurse  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on December 31, 2011, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order  
2 to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or  
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the  
following:

9 . . . .

10 (f) Conviction of a felony or of any offense substantially related to the  
11 qualifications, functions, and duties of a registered nurse, in which event the record of  
the conviction shall be conclusive evidence thereof.

12 . . . .

13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning  
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
licensed under this chapter to do any of the following:

16 . . . .

17 (b) Use any controlled substance as defined in Division 10 (commencing with  
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
19 dangerous or injurious to himself or herself, any other person, or the public or to the  
extent that such use impairs his or her ability to conduct with safety to the public the  
20 practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,  
or self-administration of any of the substances described in subdivisions (a) and (b) of  
22 this section, or the possession of, or falsification of a record pertaining to, the  
substances described in subdivision (a) of this section, in which event the record of  
23 the conviction is conclusive evidence thereof.

24 . . . .

25 11. Section 2765 of the Code states:

26 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
27 made to a charge substantially related to the qualifications, functions and duties of a  
registered nurse is deemed to be a conviction within the meaning of this article. The  
28 board may order the license or certificate suspended or revoked, or may decline to  
issue a license or certificate, when the time for appeal has elapsed, or the judgment of

conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

### REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

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1 COSTS

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(February 15, 2011 Criminal Convictions for DUI on November 14, 2010)**

8 15. Respondent has subjected her license to disciplinary action under sections 490 and  
9 2761, subdivision (f) of the Code in that she was convicted of crimes that are substantially related  
10 to the qualifications, functions, and duties of a registered nurse. The circumstances are as  
11 follows:

12 a. On or about February 15, 2011, in a criminal proceeding entitled *People of the*  
13 *State of California v. Melissa Ann Gibbens*, in Orange County Superior Court, case number  
14 11CM00657, Respondent was convicted on her plea of guilty of violating Vehicle Code section  
15 23152, subdivision (a), driving under the influence of alcohol; and Vehicle Code section 23152,  
16 subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08% or more,  
17 misdemeanors. Respondent admitted and the court found true the allegation that Respondent's  
18 BAC was .20% or more, a sentencing enhancement pursuant to Vehicle Code section 23538,  
19 subdivision (b).

20 b. As a result of the convictions, on or about February 15, 2011, Respondent was  
21 sentenced to three years informal probation and ordered to serve 10 days in jail (or 10 days of  
22 CalTrans/Physical Labor in lieu of jail). Respondent was further ordered to complete a Level 2  
23 First Offender Alcohol Program and a MADD Victim Impact Panel, pay \$2,031 in fees, fines, and  
24 restitution, and comply with the terms of standard DUI probation.

25 c. The facts that led to the conviction are that on or about the late evening of  
26 November 14, 2010, an officer with the Santa Ana Police Department was at a gas station when  
27 he observed a vehicle driven by Respondent attempt to park at the front of the business. He noted  
28 that she had difficulty parking in between the white painted lines, had trouble placing the vehicle

1 in "park," and appeared to be in a verbal and physical altercation with a male passenger. The  
2 officer made contact with Respondent who was sitting in the driver's seat; as he spoke to her, he  
3 detected an odor of an alcoholic beverage on her breath and person. The officer asked  
4 Respondent if she had been drinking. Respondent became belligerent and the officer called for  
5 backup. After being told several times to stay in her vehicle, Respondent got out of her vehicle.  
6 While the officer attempted to handcuff her, Respondent began screaming and crying.  
7 Respondent told the officer several times that she was a nurse and that one day his mother might  
8 need her help. Respondent was placed in the back of the officer's patrol car. A backup officer  
9 arrived and attempted to speak to Respondent but she continued to be belligerent and  
10 argumentative, claiming she was not driving the vehicle. The officer noted that Respondent's  
11 eyes were bloodshot and watery, her speech was slurred, and she walked with an unsteady gait.  
12 The officer attempted to administer field sobriety tests, but Respondent kept trying to walk away  
13 from the officer. Respondent was arrested for driving under the influence of alcohol. Respondent  
14 initially refused to cooperate with the administration of any chemical tests, but eventually she  
15 provided a blood sample that was analyzed with a BAC of .24 percent.

## 16 **SECOND CAUSE FOR DISCIPLINE**

### 17 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

18 16. Respondent has subjected her registered nurse license to disciplinary action under  
19 section 2762, subdivision (b) of the Code in that on or about November 14, 2010, as described in  
20 paragraph 15, above, Respondent used alcoholic beverages to an extent or in a manner that was  
21 potentially dangerous and injurious to herself, and to others in that she operated a motor vehicle  
22 while impaired with a significantly high blood alcohol concentration.

## 23 **THIRD CAUSE FOR DISCIPLINE**

### 24 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)**

25 17. Respondent has subjected her registered nurse license to disciplinary action under  
26 section 2762, subdivision (c) of the Code in that on or about February 15, 2011, as described in  
27 paragraph 15, above, Respondent was convicted of criminal offenses involving the consumption  
28 and/or self-administration of alcohol.

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